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EXAMINER

CARDENAS NAVIA, JAIME F

ART UNIT

PAPER NUMBER

3624

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/712,816	<b>Applicant(s)</b> ROYALE ET AL.	
	<b>Examiner</b> Jaime Cardenas-Navia	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9 and 15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Introduction***

1. This **NON-FINAL** office action is in response to communications received on May 26, 2009. Claims 9 and 15 have been amended. Claims 1-8 and 10-14 have been cancelled. Claims 16-22 have been added. Claims 9 and 15-22 are currently pending.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 4, 2009 has been entered.

### ***Response to Amendment***

3. **New objections to the claims** are necessitated by amendment.

4. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 112, first paragraph, rejections** as set forth in the previous office action. However, **new grounds of rejection under 35 U.S.C. § 112, first paragraph**, are presented below.

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5. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 112, second paragraph, rejections** as set forth in the previous office action. However, **new grounds of rejection under 35 U.S.C. § 112, second paragraph**, are presented below.

6. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 101 rejections** set forth in the previous office action.

#### *Claim Objections*

7. **Claim 9 is objected to** because of the following informalities: In the preamble, there are two instances of "a computer readable medium". Examiner suggests amending the second instance, starting with "in a computer readable medium", to "thereon". For purposes of examination, Examiner has assumed that necessary corrections have been made.

#### *Claim Rejections - 35 USC § 112*

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. **Claims 9 and 15-22 are rejected** under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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**Regarding claims 9 and 18,** Examiner believes that undue experimentation is required to carry out the claimed invention. Specifically, steps c) and d) lack enablement. Using the Wands factors, the step of identifying "an opportunity gap" is overly broad. Examiner could not find in the specification what constitutes such a gap, and how it is identified using the information collected during step a). Additionally there is little guidance and no working examples on how optimal facility locations and optimal services are generated. What parts of the information collected during step a) are used, and how are they used? The specification merely states that it is accomplished. Finally, because of the lack of sufficient prior art, Examiner does not believe that one of ordinary skill in the art could carry out the claimed invention without undue experimentation. To date, Examiner has found little guidance in the prior art on using the information collected in step a) to perform the steps of c) and d).

**Regarding claims 9, 21, and 22,** Examiner believes that undue experimentation is required to carry out the claimed invention. Specifically, generating optimal brands, hours, design layouts, and meal plans requires undue experimentation. There is no guidance and no working examples on how this is accomplished. What parts of the information collected during step a) are used, and how are they used? The specification merely states that it is accomplished. Finally, because of the lack of sufficient prior art, Examiner does not believe that one of ordinary skill in the art could carry out the claimed invention without undue experimentation. To date, Examiner has found little guidance in the prior art on using the information collected in step a) to generate optimal brands, hours, design layouts, and meal plans.

**Regarding claim 16,** Examiner believes that undue experimentation is required to carry out the claimed invention. Specifically, generating a plan for providing, updating, and/or

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expanding services based on population and sub/population factors requires undue experimentation. This step is very broad. What exactly is in the plan? How detailed is it? What type of "services" are included? The specification provides no guidance and no working examples. What parts of the information collected during step a) are used, and how are they used? The specification merely states that it is accomplished.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. **Claims 9 and 15-22 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Regarding claims 9 and 18**, the term "need" is relative, and so renders the claim indefinite.

**Regarding claim 15**, it is unclear whether or not this claim is meant to be independent or dependent, and whether the claim is to a machine (system) or article of manufacture (computer readable medium). For purposes of examination, Examiner has interpreted claim 15 as a dependent claim to claim 9. If Applicant intends to claim a system, it needs to be rewritten in proper independent claim format. Appropriate correction is required.

**Regarding claims 15-17**, dependency is claimed to claim 1, which has been cancelled. For purposes of examination, Examiner has interpreted the claims as dependent on claim 9. Appropriate correction is required.

***Response to Arguments***

12. Applicant's arguments have been fully considered by the Examiner, including affidavit filed under C.F.R. 1.132. They are incorporated in the rejections below.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 9 and 15-22 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Halverson (US 2002/0077843 A1) in view of Snyder et al. (US 2008/0057482 A1) and Fox (2003/0028417 A1).

**Regarding claim 9**, Halverson teaches an article comprising a computer readable medium having computer program code tangibly stored thereon executable by a computer comprising a set of instructions (par. 2) for assessing institutional food service needs on a university campus according to the following steps:

a) inputting data regarding:

3) population comprising one or more of: location, time, purpose, and schedules of individuals (par. 39, lines 9-11, fig. 8-12 are surveys and preferences, par. 58-61, the example is given where for a state fair, geographically proximate areas with similar populations and uses are

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grouped into a single unit, e.g. nearby people who like arts and crafts, nearby people who like large animal exhibits, etc.);

4) food service preferences and desires comprising one or more of: dining style, meal-type, grocery, food types, desired services, desired eating and snacking times, and food preferences (fig. 8-12); and

5) existing services comprising one or more of location of services, on-campus services, off-campus services, satisfaction, and type of services (par. 43, for example, available meal locations, capabilities and equipment of the facilities (sound generation), fig. 8-11, surveys provide satisfaction);

b) segmenting the campus into geographic units and day parts (par. 39, several examples of segmenting are given, such as primary segmenting based on preference for group or individual seating, and then secondary segmenting based on preference for music or sounds);

c) identifying an opportunity gap (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not being met and interpreted as an opportunity by management to increase value of the dining experience); and

d) for each geographic unit and day part, generating one or more optimal services to the facility locations and day parts selected from the group consisting of hours, design layouts, and meal plans (par. 39, fig. 8-12).

Halverson does not teach:

1) campus geography comprising one or more of: location of buildings, roads, landscape features, traffic patterns, travel time between buildings, and obstacles or impediments to travel; 16, information on location of buildings and travel time between buildings is collected);



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2) campus architecture comprising one or more of: use, location, attendance rates, and schedule of each building;

d) for each geographic unit, generating optimal facility locations and one or more optimal services to the facility locations selected from the group consisting of brands; and

e) generating a financial model for each of said optimal facility locations.

Snyder teaches:

1) campus geography comprising one or more of: location of buildings, roads, landscape features, traffic patterns, travel time between buildings, and obstacles or impediments to travel (par. 16, information on location of buildings and travel time between buildings is collected); and

2) campus architecture comprising one or more of: use, location, attendance rates, and schedule of each building (par. 16, information on preferences and resource-based use of buildings is collected, par. 170, location of buildings is gathered to calculated distance between buildings, par. 15, collection of attendance information, par. 16, schedule of classes in building is collected and optimized).

The inventions of Halverson and Snyder pertain to collecting demographic information to optimize the services of an institution. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Snyder does not teach away from or contradict Halverson, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by increased efficiency in the services of

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the institution provided by taking into account as much information about the community as possible, as recognized by Halverson (par. 43, lines 59-62).

Neither Halverson nor Snyder teaches:

- d) for each geographic unit, generating optimal facility locations and one or more optimal services to the facility locations selected from the group consisting of brands; and
- e) generating a financial model for each of said optimal facility locations.

Fox teaches:

- d) for each geographic unit, generating optimal facility locations (par. 16, 17) and one or more optimal services to the facility locations selected from the group consisting of brands (par. 43); and
- e) generating a financial model for each of said optimal facility locations (par. 16, 17).

The inventions of Halverson, Snyder, and Fox pertain to improving existing services. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Fox does not teach away from or contradict either Halverson or Snyder, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the need expressed in Fox of expanding and/or contracting service locations in addition to improving them at current locations (par. 16, 17).

**Regarding claim 15**, Halverson teaches a computer system for managing a campus food service system (Abstract) comprising:

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a database (fig. 1); and

a computer including the computer readable medium of claim 9 (see claim 9),  
programmed to optimize the campus food service system based on responses to surveys of  
patrons and potential patrons,

the database including records of facilities, staff, menu options, times of services, campus  
calendar, and the responses comprising patron and potential patron preferences, wherein the  
computer system generates, in addition to the facility locations and financial models, schedules  
of menu items, staff, and service times for each dining facility (par. 39, fig. 8-12).

**Regarding claim 16**, neither Halverson nor Snyder teach generating a plan for providing,  
updating, and/or expanding services based on population and sub/population factors.

Fox teaches generating a plan for providing, updating, and/or expanding services based  
on population and sub/population factors (par. 16, 17).

The inventions of Halverson, Snyder, and Fox pertain to improving existing services. All  
the claimed elements were known in the prior art and one skilled in the art could have combined  
the elements as claimed by known methods with no change in their respective functions, as Fox  
does not teach away from or contradict either Halverson or Snyder, but rather, teaches a function  
that was not addressed. The claimed invention is merely a combination of old and well-known  
elements, and the combination would have yielded predictable results to one of ordinary skill in  
the art at the time of the invention. Thus, it would have been obvious to combine the teachings,  
motivated by the need expressed in Fox of expanding and/or contracting service locations in  
addition to improving them at current locations (par. 16, 17).

**Regarding claim 17**, Halverson teaches wherein the campus is a university campus (par. 15, 39).

**Regarding claims 18 and 19**, they are rejected using the same art and rationale used above for rejecting claims 9 and 17. This is because claims 18 and 19 claim a method for performing the same functions as the article of claims 9 and 17.

**Regarding claim 20**, Halverson teaches using a computer to generate schedules of menu items and staff for each at least one dining facility on the campus (par. 39, fig. 8-12).

**Regarding claims 21 and 22**, Halverson teaches generating optimal hours, design layouts, and meal plans corresponding to the facility locations (par. 39, fig. 8-12).

Halverson does not teach generating optimal brands corresponding to the facility locations.

Fox teaches generating optimal brands corresponding to the facility locations (par. 16, 17, 43).

The inventions of Halverson, Snyder, and Fox pertain to improving existing services. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Fox does not teach away from or contradict either Halverson or Snyder, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the need expressed in Fox of expanding and/or contracting service locations in addition to improving them at current locations (par. 16, 17).

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 3, 2009

/J. C./  
Examiner, Art Unit 3624

/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 3624